REMARKS

The above amendment with the following remarks is submitted to be fully responsive to the Official Action of October 6, 2004. Reconsideration of this application in light of the amendment and the allowance of this application are respectfully requested.

Claims 1-12 stand objected to for including reference characters. By this amendment, the claims have been amended to delete the reference characters. Thus, this objection has been overcome.

Claims 1-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brinkerhoff et al. in view of Hermann et al. In response, claim 1 has been amended to clarify the present invention related to the foam embodiment while new independent claim 13 has been added to clarify the invention relative to other embodiments. The present invention as recited in newly amended independent claim 1 and new independent claim 13 is believed to be allowable over Hermann et al. for the following reasons.

Newly amended independent claim 1 of the present invention is specifically directed to a surgical device having a fixing means, a sleeve connected to the fixing means and a sealing means incorporating a foam shell positioned between the patient's body and the sleeve to prevent substantial leakage of gas from the body cavity and formed to mold about a substantial portion of a surgeon's hand or surgical instrument on insertion in an operating position. Brinkerhoff et al. admittedly discloses a surgical sealing device including a fixing means and a sleeve connected to the fixing means. However, Brinkerhoff nowhere suggests a foam shell. Brinkerhoff et al. only suggests an inflatable sealing device for inflation with air. Thus, Brinkerhoff et al. does not suggest foam. Moreover, Brinkerhoff et al. does not suggest foam positioned between the patient's body and an innermost sleeve. Brinkerhoff et al. specifically requires an additional sleeve portion or sleeve layer between the

patient's body and the air of the inflatable sealing device. The foam disclosed in Hermann et al. is positioned in a rigid device between an outer wall of the device and a balloon membrane. Thus, the Hermann et al. device does not suggest foam positioned between an innermost sleeve and the patient's body. Therefore, the combination of Brinkerhoff et al. and Hermann et al. does not and could not render the present invention obvious to a person of ordinary skill in the art. Thus, it is respectfully requested that this rejection of newly amended independent claim 1 be withdrawn.

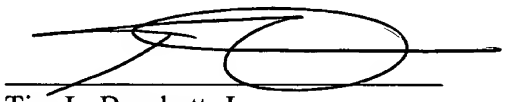
New independent claim 13 is hereby added to protect the present invention in the form of a surgical device having a body cavity engagement means and a fixing means in the form of a ring wherein the body cavity engagement means is adjustable by positioning of the ring to define an access port and create a seal between the incision and the body cavity engagement means in combination with an additional seal in the form of a toroid cell comprising a bladder filled with one of a liquid and a gel. Brinkerhoff et al. and Hermann et al. do not suggest alone, or in combination, the combination of elements recited in newly independent claim 13. Neither Brinkerhoff et al. nor Hermann et al. suggest a body cavity engagement means that is adjustable by positioning of a ring to create a seal between the incision and the body cavity engagement means. The Brinkerhoff et al. design nowhere suggests that a seal is created between the inner layer of the toroid section and the patient's body by adjustment of stiffening ring 20. In fact, Brinkerhoff et al. specifically requires the inflation of the toroidal section for a seal to be created. Clearly, Hermann et al. does not make up this shortcoming of Brinkerhoff et al. in that Hermann et al. nowhere suggests that the positioning of a ring creates a seal between the incision and the body cavity engagement means. A person of ordinary skill in the art would not be motivated by either Brinkerhoff et al. or Hermann et al. to modify Brinkerhoff et al. so as to arrive at Applicants' invention which requires the positioning of a ring to create a seal between the incision and the body cavity

engagement means. Thus, the combination of Brinkerhoff et al. and Hermann et al. does not render the present invention as recited in new independent claim 13 obvious.

Accordingly, reconsideration and withdrawal of the rejection of independent claim 1 under 35 U.S.C. §103(a) is in order and respectfully requested. Also, it is respectfully submitted that dependent claims 6-12 are likewise allowable in that they depend from what is believed to be allowable base claim 1. In addition, it is noted that with respect to claim 11, neither Brinkerhoff et al. nor Hermann et al. suggest a distal valve in addition to a sealing means incorporating a foam shell. Also, it is believed that independent claim 13 is allowable over the prior art record and a notice to that effect is respectfully requested.

In view of the foregoing, it is submitted that the present application is in condition for allowance and a notice to that effect is respectfully requested. However, if the Examiner deems that any issue remains after considering this response, he is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,



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